REMARKS

The Office Action mailed October 23, 2006, and made final, has been carefully reviewed and the foregoing amendment has been made in consequence thereof.

Claims 1-20 are now pending in this application. Claims 1-20 stand rejected. Claims 1, 10, and 19 have been amended. Support for these amendments may be found on page nine of the specification. More specifically, lines 22-25 establish a relationship between a number of appliance goods and an associated number of slots. Because each appliance good inherently defines a volume, each slot individually, and a number of slots collectively, also define volumes. No new matter has been added.

Entry of this amendment is proper under 37 CFR § 1.116 since the amendment: (a) places the application in condition for allowance for the reasons discussed herein; (b) does not raise any new issue requiring further search and/or consideration as the amendment relates to issues previously discussed throughout prosecution; (c) satisfies a requirement of form asserted in the Office Action; (d) does not present any additional claims without canceling a corresponding number of finally rejected claims; and (e) places the application in better form for appeal, should an appeal be necessary. The amendments herein are necessary and were not earlier presented because they are made in response to arguments raised in the final Office Action. Entry of this amendment is thus respectfully requested.

The objection to Claims 1, 10 and 19 because of alleged informalities is respectfully traversed.

The Examiner objects to claims 1, 10 and 19. More specifically, the Examiner alleges that the claim language "calendar further adapted to have drill down" and "goods are configured to utilize the entire" indicates that as claimed the invention is merely adapted to have a drill-down capability or is configured to utilize the entire delivery capacity, and notes that the system does not actually have a drill-down capability or utilizes the entire delivery capacity.

Applicants respectfully submit that such claim language properly claims Applicants' invention and, thus, no further amendment is required. For at least the reasons set forth above, Applicants respectfully request withdrawal of this objection.

The Examiner alleges that Applicants "did not challenge the officially noticed fact(s) cited in the previous office action(s) therefore those statements as presented are herein after prior art." Specifically, the Examiner alleges that it has been established that it was old and well known in the art at the time of the invention: to provide a drill down capability in order to provide additional (daily, hourly, weekly, monthly, yearly, etc.) data as part of a calendar wherein such a capability enables users to efficiently and/or effectively navigate between the various "levels" of information; and to express data, specifically utilization/usage data, as a percentage provides a convenient and/or intuitive mechanism for illustrating/communicating the capacity of a resource (e.g. a specific delivery route is 50% reserved versus 30 out of a possible 60 orders have been reserved).

Applicants respectfully traverse the allegation that these statements were not challenged in Applicants' previously filed response. More specifically, Applicants assert that at page 13 of the Amendment dated as filed on August 22, 2006, Applicants traverse the Official Notice set forth by the Examiner in the Office Action dated as mailed on March 9, 2006.

Applicants again respectfully traverse the Official Notice that providing a drill down capability in order to provide additional data as part of a calendar is old and very well known. Further, none of Reference A, Reference B, Reference C and Jacobs, alone or in combination, describes or suggests using a drill down capability to enable users to efficiently and/or effectively navigate between various "levels" of information.

Moreover, Applicants respectfully traverse the Official Notice that expressing data as a percentage is old and very well known. None of Reference A, Reference B, Reference C and Jacobs, alone or in combination, describes or suggests expressing a delivery agent capacity per day as percentage. Applicants respectfully request that evidence be shown to support such statements.

The rejection of Claims 1-20 under 35 U.S.C. § 103 as being unpatentable over WebVan as evidenced by at least: Borders et al. (PCT International Application Pub. No. WO 00/68859) (hereinafter referred to as "Reference A"); Borders et al. (PCT International Application Pub. No. WO 00/68856) (hereinafter referred to as "Reference B"); and Borders et al. (U.S. Patent Application Pub. No. 2001/0047285) (hereinafter referred to as "Reference

C") in view of Jacobs et al. (U.S. Patent Application Pub. No. 2002/0010610) (hereinafter referred to as "Jacobs") is respectfully traversed.

Reference A describes a data network including a plurality of subsystems which, together, form an integrated system for receiving, filling, and delivering ordered products. The network also includes a capacity database for managing capacity data associated with each subsystem. Specifically, the capacity database tracks the amount of customer orders that have not yet been delivered to determine when each subsystem will have an available capacity to deliver an ordered good. By tracking the capacity of each subsystem, the network can relay to the customer a date upon which their goods will be delivered. Notably, Reference A does not describe or suggest calculating a first delivery capacity for the delivery agent information, the first delivery capacity comprising a first volume defined by a first plurality of slots, wherein each slot defines a slot volume, and assigning a work unit to each of the plurality of goods indicative of a portion of the first volume defined by a number of slots used to deliver each good, the work unit based on a size of the good and a degree of difficulty in installing the good.

Reference B describes a system for delivering groceries to a customer's home. The system allows a user to purchase groceries online and select a delivery date and time. Specifically, the system tracks a delivery capacity based on customer purchases and uses the information on customer purchases to display delivery times and dates to other users purchasing groceries. Notably, Reference B does not describe or suggest calculating a first delivery capacity for the delivery agent information, the first delivery capacity comprising a first volume defined by a first plurality of slots, wherein each slot defines a slot volume, and assigning a work unit to each of the plurality of goods indicative of a portion of the first volume defined by a number of slots used to deliver each good, the work unit based on a size of the good and a degree of difficulty in installing the good.

Reference C describes a method for scheduling delivery of products via the Internet. The method includes generating a delivery window grid and scheduling the selected window with reference to available resource capacity, which is reflective of a plurality of previous commitments. The method also includes capacity planning. In the method, a number of totes is estimated and updated at checkout based on a plurality of items in a customer's cart and information in a catalog about a volume of those items. This is necessary because in scheduling delivery, the customer is reserving a number of different types of capacity, e.g.,

van capacity, and service duration. Notably, the number of estimated totes is based solely on the size of the customer's order. Reference C does not describe or suggest calculating a first delivery capacity for the delivery agent information, the first delivery capacity comprising a first volume defined by a first plurality of slots, wherein each slot defines a slot volume, and assigning a work unit to each of the plurality of goods indicative of a portion of the first volume defined by a number of slots used to deliver each good, the work unit based on a size of the good and a degree of difficulty in installing the good.

Jacobs describes a system and method for scheduling splittable work orders including identifying the available appointment windows on the requested day of service and then scheduling the work order in one or more available windows, depending upon the job duration and the duration of the available windows. Jacobs does not describe or suggest calculating a first delivery capacity for the delivery agent information, the first delivery capacity comprising a first volume defined by a first plurality of slots, wherein each slot defines a slot volume, and assigning a work unit to each of the plurality of goods indicative of a portion of the first volume defined by a number of slots used to deliver each good, the work unit based on a size of the good and a degree of difficulty in installing the good.

Claim 1 recites a method of displaying the capacity utilization of a goods delivery system, the goods delivery system having at least one delivery agent location, address and delivery zone, said method implemented by a computing unit and comprising the steps of "getting delivery agent information of a delivery agent that delivers a plurality of goods; calculating a first delivery capacity for said delivery agent information, the first delivery capacity comprising a first volume defined by a first plurality of slots, each slot defining a slot volume; assigning a work unit to each of the plurality of goods indicative of a portion of the first volume defined by a number of slots used to deliver each good, the work unit based on at least one of a size of the good and a degree of difficulty in installing the good; calculating, by the computing unit, a portion of the first delivery capacity used for said delivery agent information based on assigned work units; ..."

None of Reference A, Reference B, Reference C, and Jacobs, considered alone or in combination, describes or suggests a method of displaying the capacity utilization of a goods delivery system as recited in Claim 1. More specifically, none of Reference A, Reference B, Reference C, and Jacobs, considered alone or in combination, describes or suggests a method wherein a delivery capacity is determined by calculating a first delivery capacity for the

delivery agent information, the first delivery capacity comprising a first volume defined by a first plurality of slots, wherein each slot defines a slot volume, and assigning a work unit to each of the plurality of goods indicative of a portion of the first volume defined by a number of slots used to deliver each good, the work unit based on at least one of a size of the good and a degree of difficulty in installing the good, as required by Applicants' claimed invention. Rather, in contrast to the present invention, Reference A describes presenting a customer with available delivery window time slots, Reference B describes determining capacity based on the amount of undelivered orders, Reference C describes using a delivery window grid to schedule delivery times, and Jacobs describes identifying available appointment windows on the requested day of service and then scheduling the work order in one or more available windows, depending upon the job duration and the duration of the available windows.

Accordingly, for at least the reasons set forth above, Claim 1 is submitted to be patentable over WebVan as evidenced by Reference A, Reference B and Reference C in view of Jacobs.

Claims 2-9 depend, directly or indirectly, from independent Claim 1. When the recitations of Claims 2-9 are considered in combination with the recitations of Claim 1, Applicants submit that dependent Claims 2-9 likewise are patentable over WebVan as evidenced by Reference A, Reference B and Reference C in view of Jacobs.

Claim 10 recites a computer program embodied on a computer readable medium for executing a computer process for displaying the capacity utilization of a goods delivery system, the goods delivery system having at least one delivery agent location, address and delivery zone, said computer program comprising at least one code segment for employing a method of displaying the capacity utilization comprising the steps of "getting delivery agent information of a delivery agent that delivers a plurality of goods; calculating a first delivery capacity for said delivery agent information, the first delivery capacity comprising a first volume defined by a first plurality of slots, each slot defining a slot volume; assigning a work unit to each of the plurality of goods indicative of a portion of the first volume defined by a number of slots used to deliver each good, the work unit based on at least one of a size of the good and a degree of difficulty in installing the good; calculating a portion of the first delivery capacity used for said delivery agent information based on assigned work units; ..."

None of Reference A, Reference B, Reference C, and Jacobs, considered alone or in combination, describes or suggests a computer program embodied on a computer readable medium for executing a computer process for displaying the capacity utilization of a goods delivery system as recited in Claim 10. More specifically, none of Reference A, Reference B, Reference C, and Jacobs, considered alone or in combination, describes or suggests a computer system that determines a first delivery capacity for said delivery agent information wherein the first delivery capacity comprises a first volume defined by a first plurality of slots, wherein each slot defines a slot volume, and assigning a work unit to each of the plurality of goods indicative of a portion of the first volume defined by a number of slots used to deliver each good, the work unit based on at least one of a size of the good and a degree of difficulty in installing the good. Rather, in contrast to the present invention, Reference A describes presenting a customer with an available delivery window time slot, Reference B describes determining capacity based on the amount of undelivered orders, Reference C describes using a delivery window grid to schedule delivery times and Jacobs describes identifying available appointment windows on the requested day of service and then scheduling the work order in one or more available windows, depending upon the job duration and the duration of the available windows.

Accordingly, for at least the reasons set forth above, Claim 10 is submitted to be patentable over WebVan as evidenced by Reference A, Reference B and Reference C in view of Jacobs.

Claims 11-18 depend from independent Claim 10. When the recitations of Claims 11-18 are considered in combination with the recitations of Claim 10, Applicants submit that dependent Claims 11-18 likewise are patentable over WebVan as evidenced by Reference A, Reference B and Reference C in view of Jacobs.

Claim 19 recites an apparatus for displaying the capacity utilization of a goods delivery system, the goods delivery system having at least one delivery agent location, address and delivery zone, said apparatus for displaying the capacity utilization comprising "means for getting delivery agent information of a delivery agent that delivers a plurality of goods; means for calculating a first delivery capacity for said delivery agent information, the first delivery capacity comprising a first volume defined by a first plurality of slots, each slot defining a slot volume; means for assigning a work unit to each of the plurality of goods indicative of a portion of the first volume defined by a number of slots used to deliver each

good, the work unit based on at least one of a size of the good and a degree of difficulty in installing the good; means for calculating a portion of the first delivery capacity used for said delivery agent information based on assigned work units; ..."

None of Reference A, Reference B, Reference C, and Jacobs, considered alone or in combination, describes or suggests an apparatus for displaying the capacity utilization of a goods delivery system as recited in Claim 19. More specifically, none of Reference A, Reference B, Reference C, and Jacobs, considered alone or in combination, describes or suggests an apparatus that determines a first delivery capacity for said delivery agent information comprising a first volume defined by a first plurality of slots wherein each slot defines a slot volume, and assigning a work unit to each of the plurality of goods indicative of a portion of the first volume defined by a number of slots used to deliver each good, the work unit based on a size of the good and a degree of difficulty in installing the good.

Accordingly, for at least the reasons set forth above, Claim 19 is submitted to be patentable over WebVan as evidenced by Reference A, Reference B and Reference C in view of Jacobs.

Claim 20 depends from independent Claim 19. When the recitations of Claim 20 are considered in combination with the recitations of Claim 19, Applicants submit that dependent Claim 20 likewise is patentable over WebVan as evidenced by Reference A, Reference B and Reference C in view of Jacobs.

Moreover, Applicants respectfully submit that the Section 103 rejection of the presently pending claims is not a proper rejection. As is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. None of Reference A, Reference B, Reference C, and Jacobs, considered alone or in combination, describes or suggests the claimed invention. Further, in contrast to the Examiner's assertion within the Office Action, Applicants respectfully submit that it would not be obvious to one skilled in the art to combine Reference A, Reference B, Reference C and Jacobs because there is no motivation to combine the references suggested in the art. Additionally, the Examiner has not pointed to any prior art that teaches or suggests to combine the disclosures, other than Applicants' own teaching.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. Ex parte Levengood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicants' disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicant's disclosure. In re Vaeck, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). In the present case, neither a suggestion nor motivation to combine the prior art disclosures, nor any reasonable expectation of success, has been shown.

Further, it is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the cited art so that the claimed invention is rendered obvious. Specifically, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the art to deprecate the claimed invention. Further, it is impermissible to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. The present Section 103 rejection is based on a combination of teachings selected in an attempt to arrive at the claimed invention. Since there is no teaching or suggestion in the cited art for the combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for these reasons, along with the reasons given above, Applicants request that the Section 103 rejections of the claims be withdrawn.

For at least the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claims 1-20 be withdrawn.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully submitted,

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